

fund, Major Events trust fund, Motor Sports Racing trust fund, and Events trust fund for sporting and non-sporting events shall be transferred from the comptroller of public accounts to the Texas Economic Development and Tourism Office;

(2) all rules, forms, policies, procedures, or decisions of the comptroller that are related to the trust funds described by Subdivision (1) of this subsection are continued in effect as rules, forms, policies, procedures, or decisions of the Economic Development and Tourism Division, Office of the Governor, until superseded by a rule or other appropriate act of the Texas Economic Development and Tourism Office; and

(3) a reference in law or administrative rule to the comptroller relating to the decisions for and administration of the trust funds described by Subdivision (1) of this subsection, other than a duty typically performed by the comptroller related to a state fund, means the Texas Economic Development and Tourism Office.

(b) Before the transfer of the administration of the Pan American Games trust fund, Olympic Games trust fund, Major Events trust fund, Motor Sports Racing trust fund, and Events trust fund for sporting and non-sporting events, the comptroller of public accounts and the Texas Economic Development and Tourism Office shall coordinate the transfer of powers and duties, including records and other items, in accordance with the memorandum of understanding adopted under Section 13 of this Act, to ensure a smooth transition.

SECTION 15. Notwithstanding the repeal by this Act of Chapter 398, Local Government Code, a special event plan approved under former Chapter 398 of that code before September 1, 2015, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 16. This Act takes effect September 1, 2015.

Passed the Senate on April 9, 2015: Yeas 29, Nays 2; the Senate concurred in House amendments on May 29, 2015: Yeas 27, Nays 4; passed the House, with amendments, on May 26, 2015: Yeas 116, Nays 31, one present not voting.

Approved June 18, 2015.

Effective September 1, 2015.

DECEDENTS' ESTATES

CHAPTER 949

S.B. No. 995

AN ACT

relating to decedents' estates.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 113.004(4), Estates Code, is amended to read as follows:

(4) "P.O.D. account," *including an account designated as a transfer on death or T.O.D. account*, means an account payable on request to:

(A) one person during the person's lifetime and, on the person's death, to one or more P.O.D. payees; or

(B) one or more persons during their lifetimes and, on the death of all of those persons, to one or more P.O.D. payees.

SECTION 2. Section 113.152, Estates Code, is amended by adding Subsection (c) to read as follows:

(c) *A guardian of the estate or an attorney in fact or agent of an original payee may sign a written agreement described by Subsection (a) on behalf of the original payee.*

SECTION 3. Section 123.001, Estates Code, is amended to read as follows:

Sec. 123.001. WILL PROVISIONS MADE BEFORE DISSOLUTION OF MARRIAGE.

(a) In this section:

(1) *"Irrevocable trust" means a trust:*(A) *for which the trust instrument was executed before the dissolution of a testator's marriage; and*(B) *that the testator was not solely empowered by law or by the trust instrument to revoke.*(2) *"Relative"*~~["relative"]~~ means an individual related to another individual by:(A) ~~[(1)]~~ consanguinity, as determined under Section 573.022, Government Code; or(B) ~~[(2)]~~ affinity, as determined under Section 573.024, Government Code.(b) If, after the testator makes a will, the testator's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, *unless the will expressly provides otherwise:*(1) *all provisions in the will, including all fiduciary appointments, shall be read as if the former spouse and each relative of the former spouse who is not a relative of the testator had failed to survive the testator; and*(2) *all provisions in the will disposing of property to an irrevocable trust in which a former spouse or a relative of a former spouse who is not a relative of the testator is a beneficiary or is nominated to serve as trustee or in another fiduciary capacity or that confers a general or special power of appointment on a former spouse or a relative of a former spouse who is not a relative of the testator shall be read to instead dispose of the property to a trust the provisions of which are identical to the irrevocable trust, except any provision in the irrevocable trust:*(A) *conferring a beneficial interest or a general or special power of appointment to the former spouse or a relative of the former spouse who is not a relative of the testator shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had disclaimed the interest granted in the provision; and*(B) *nominating the former spouse or a relative of the former spouse who is not a relative of the testator to serve as trustee or in another fiduciary capacity shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had died immediately before the dissolution of the marriage*~~["unless the will expressly provides otherwise"]~~.

(c) Subsection (b)(2) does not apply if one of the following provides otherwise:

(1) *a court order; or*(2) *an express provision of a contract relating to the division of the marital estate entered into between the testator and the testator's former spouse before, during, or after the marriage.*

SECTION 4. Section 123.052(a), Estates Code, is amended to read as follows:

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual before the divorced individual's marriage was dissolved and that:

(1) *is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;*(2) *revocably confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or*(3) *revocably nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:*

- (A) as a personal representative, trustee, conservator, agent, or guardian; or
- (B) in another fiduciary or representative capacity.

SECTION 5. Chapter 123, Estates Code, is amended by adding Subchapter D to read as follows:

**SUBCHAPTER D. EFFECT OF DISSOLUTION OF MARRIAGE ON
CERTAIN MULTIPLE-PARTY ACCOUNTS**

Sec. 123.151. DESIGNATION OF FORMER SPOUSE OR RELATIVE OF FORMER SPOUSE ON CERTAIN MULTIPLE-PARTY ACCOUNTS. (a) *In this section:*

(1) *"Beneficiary," "multiple-party account," "P.O.D. account," and "P.O.D. payee" have the meanings assigned by Chapter 113.*

(2) *"Public retirement system" has the meaning assigned by Section 802.001, Government Code.*

(3) *"Relative" has the meaning assigned by Section 123.051.*

(b) *If, after a decedent designates a spouse or a relative of a spouse who is not a relative of the decedent as a P.O.D. payee or beneficiary, including alternative P.O.D. payee or beneficiary, on a P.O.D. account or other multiple-party account, the decedent's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, the designation provision on the account is not effective as to the former spouse or the former spouse's relative unless:*

(1) *the court decree dissolving the marriage designates the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary;*

(2) *the decedent redesignated the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary after the marriage was dissolved; or*

(3) *the former spouse or the former spouse's relative is designated to receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either the decedent or the former spouse.*

(c) *If a designation is not effective under Subsection (b), a multiple-party account is payable to the named alternative P.O.D. payee or beneficiary or, if an alternative P.O.D. payee or beneficiary is not named, to the estate of the decedent.*

(d) *A financial institution or other person obligated to pay an account described by Subsection (b) that pays the account to the former spouse or the former spouse's relative as P.O.D. payee or beneficiary under a designation that is not effective under Subsection (b) is liable for payment of the account to the person provided by Subsection (c) only if:*

(1) *before payment of the account to the designated P.O.D. payee or beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the P.O.D. payee or beneficiary is not effective under Subsection (b); and*

(2) *the payor has not interpleaded the account funds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.*

(e) *This section does not affect the right of a former spouse to assert an ownership interest in an undivided multiple-party account described by Subsection (b).*

(f) *This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system.*

SECTION 6. Section 201.051, Estates Code, is amended to read as follows:

Sec. 201.051. MATERNAL INHERITANCE. (a) *For purposes of inheritance, a child is the child of the child's biological or adopted mother, and the child and the child's issue shall inherit from the child's mother and the child's maternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and they may inherit from the child and the child's issue. However, if a child has intended parents, as defined by Section 160.102, Family Code, under a gestational agreement validated under Subchapter I,*

Chapter 160, Family Code, the child is the child of the intended mother and not the biological mother or gestational mother unless the biological mother is also the intended mother.

(b) This section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 or by the child's issue.

SECTION 7. Section 201.052, Estates Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 or by the child's issue.

SECTION 8. Section 201.056, Estates Code, is amended to read as follows:

Sec. 201.056. **PERSONS NOT IN BEING.** No right of inheritance accrues to any person ~~[other than to a child or lineal descendant of an intestate;]~~ unless the person is born before, or is in gestation at, ~~[in being and capable in law to take as an heir at]~~ the time of the intestate's death and survives for at least 120 hours. A person is:

(1) *considered to be in gestation at the time of the intestate's death if insemination or implantation occurs at or before the time of the intestate's death; and*

(2) *presumed to be in gestation at the time of the intestate's death if the person is born before the 301st day after the date of the intestate's death.*

SECTION 9. Section 202.005, Estates Code, is amended to read as follows:

Sec. 202.005. **APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP.** A person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004 to commence the proceeding. The application must state:

(1) the decedent's name and ~~date [time]~~ and place of death;

(2) the names and *physical addresses where service can be had* ~~[residences]~~ of the decedent's heirs, the relationship of each heir to the decedent, *whether each heir is an adult or minor*, and the true interest of the applicant and each of the heirs in the decedent's estate or in the trust, as applicable;

(3) if the ~~date [time]~~ or place of the decedent's death or the name or *physical address where service can be had* ~~[residence]~~ of an heir is not definitely known to the applicant, all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the ~~date [time]~~ or place of the decedent's death or the name or *physical address where service can be had* ~~[residence]~~ of the heir;

(4) that all children born to or adopted by the decedent have been listed;

(5) that each of the decedent's marriages has been listed with:

(A) the date of the marriage;

(B) the name of the spouse;

(C) the date and place of termination if the marriage was terminated; and

(D) other facts to show whether a spouse has had an interest in the decedent's property;

(6) whether the decedent died testate and, if so, what disposition has been made of the will;

(7) a general description of all property belonging to the decedent's estate or held in trust for the benefit of the decedent, as applicable; and

(8) an explanation for the omission from the application of any of the information required by this section.

SECTION 10. Section 202.055, Estates Code, is amended to read as follows:

Sec. 202.055. **SERVICE OF CITATION ON CERTAIN PERSONS NOT REQUIRED.** A party to a proceeding to declare heirship who executed the application filed under Sec-

tion 202.005, *entered an appearance in the proceeding, or waived citation under this subchapter is not required to be served by any method.*

SECTION 11. Section 202.056, Estates Code, is amended to read as follows:

Sec. 202.056. **WAIVER OF SERVICE OF CITATION.** (a) *Except as provided by Subsection (b)(2), a distributee may waive citation required by this subchapter to be served on the distributee.*

(b) A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee who:

(1) is younger than 12 years of age may waive citation required by this subchapter to be served on the distributee; and

(2) is 12 years of age or older may not waive citation required by this subchapter to be served on the distributee.

SECTION 12. Section 202.201(a), Estates Code, is amended to read as follows:

(a) The judgment in a proceeding to declare heirship must state:

(1) the names ~~[and places of residence]~~ of the heirs of the decedent who is the subject of the proceeding; and

(2) the heirs' respective shares and interests in the decedent's property.

SECTION 13. Subchapter B, Chapter 251, Estates Code, is amended by adding Section 251.053 to read as follows:

Sec. 251.053. **EXCEPTION FOR FOREIGN AND CERTAIN OTHER WILLS.** *Section 251.051 does not apply to a written will executed in compliance with:*

(1) *the law of the state or foreign country where the will was executed, as that law existed at the time of the will's execution; or*

(2) *the law of the state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or at the time of the testator's death.*

SECTION 14. Section 251.1045(a), Estates Code, is amended to read as follows:

(a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, _____, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I ~~[have]~~ willingly ~~make~~ ~~[made]~~ and ~~execute~~ ~~[executed]~~ it in the presence of the undersigned witnesses, all of whom ~~are~~ ~~[were]~~ present at the same time, as my free act and deed, and that I ~~request~~ ~~[have requested]~~ each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this _____ day of _____, 20_____.

Testator

The undersigned, _____ and _____, each being at least fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary of the armed forces of the United States or of the United States Maritime Ser-

vice), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this _____ day of _____, 20_____.

Witness

Witness

Subscribed and sworn to before me by the said _____, testator, and by the said _____ and _____, witnesses, this _____ day of _____, 20_____.

(SEAL)

(Signed)

(Official Capacity of Officer)

SECTION 15. The heading to Section 253.001, Estates Code, is amended to read as follows:

Sec. 253.001. COURT MAY NOT PROHIBIT CHANGING OR REVOKING A WILL.

SECTION 16. Sections 253.001(b) and (c), Estates Code, are amended to read as follows:

(b) A court may not prohibit a person from:

- (1) executing a new will;
- (2) *executing* ~~or~~ a codicil to an existing will; or
- (3) *revoking an existing will or codicil in whole or in part.*

(c) Any portion of a court order that purports to prohibit a person from *engaging in an action described by Subsection (b)* ~~[executing a new will or a codicil to an existing will]~~ is void and may be disregarded without penalty or sanction of any kind.

SECTION 17. Section 254.005, Estates Code, is amended to read as follows:

Sec. 254.005. FORFEITURE CLAUSE. (a) A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

- (1) just cause existed for bringing the action; and
- (2) the action was brought and maintained in good faith.

(b) *This section is not intended to and does not repeal any law recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.*

SECTION 18. Subchapter G, Chapter 255, Estates Code, is amended by adding Section 255.304 to read as follows:

Sec. 255.304. *APPLICABILITY OF SUBCHAPTER. This subchapter is applicable only to wills executed on or after September 1, 2005.*

SECTION 19. Chapter 255, Estates Code, is amended by adding Subchapters I and J to read as follows:

SUBCHAPTER I. CLASS GIFTS

Sec. 255.401. *POSTHUMOUS CLASS GIFT MEMBERSHIP. (a) A right to take as a member under a class gift does not accrue to any person unless the person is born before, or is in gestation at, the time of the testator's death and survives for at least 120 hours. A person is:*

(1) *considered to be in gestation at the time of the testator's death if insemination or implantation occurs at or before the time of the testator's death; and*

(2) *presumed to be in gestation at the time of the testator's death if the person was born before the 301st day after the date of the testator's death.*

(b) *A provision in the testator's will that is contrary to this section prevails over this section.*

SUBCHAPTER J. JUDICIAL MODIFICATION OR REFORMATION OF WILLS

Sec. 255.451. CIRCUMSTANCES UNDER WHICH WILL MAY BE MODIFIED OR REFORMED. (a) *On the petition of a personal representative, a court may order that the terms of the will be modified or reformed, that the personal representative be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or that the personal representative be prohibited from performing acts that are required by the terms of the will, if:*

(1) *modification of administrative, nondispositive terms of the will is necessary or appropriate to prevent waste or impairment of the estate's administration;*

(2) *the order is necessary or appropriate to achieve the testator's tax objectives or to qualify a distributee for government benefits and is not contrary to the testator's intent; or*

(3) *the order is necessary to correct a scrivener's error in the terms of the will, even if unambiguous, to conform with the testator's intent.*

(b) *An order described in Subsection (a)(3) may be issued only if the testator's intent is established by clear and convincing evidence.*

Sec. 255.452. JUDICIAL DISCRETION. *The court shall exercise the court's discretion to order a modification or reformation under this subchapter in the manner that conforms as nearly as possible to the probable intent of the testator.*

Sec. 255.453. RETROACTIVE EFFECT. *The court may direct that an order described by this subchapter has retroactive effect.*

Sec. 255.454. POWERS CUMULATIVE. *This subchapter does not limit a court's powers under other law, including the power to modify, reform, or terminate a testamentary trust under Section 112.054, Property Code.*

Sec. 255.455. DUTIES AND LIABILITY OF PERSONAL REPRESENTATIVE UNDER SUBCHAPTER. (a) *This subchapter does not create or imply a duty for a personal representative to:*

(1) *petition a court for modification or reformation of a will, to be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or to be prohibited from performing acts that are required by the terms of the will;*

(2) *inform devisees about the availability of relief under this subchapter; or*

(3) *review the will or other evidence to determine whether any action should be taken under this subchapter.*

(b) *A personal representative is not liable for failing to file a petition under Section 255.451.*

SECTION 20. Sections 256.003(a) and (b), Estates Code, are amended to read as follows:

(a) *Except as provided by Section 501.001 with respect to a foreign will, a [A] will may not be admitted to probate after the fourth anniversary of the testator's death unless it is shown by proof that the applicant for the probate of the will was not in default in failing to present the will for probate on or before the fourth anniversary of the testator's death.*

(b) *Except as provided by Section 501.006 with respect to a foreign will, letters [Let-*

ters] testamentary may not be issued if a will is admitted to probate after the fourth anniversary of the testator's death.

SECTION 21. Section 256.051(a), Estates Code, is amended to read as follows:

(a) An executor named in a will, *an independent administrator designated by all of the distributees of the decedent under Section 401.002(b)*, or an interested person may file an application with the court for an order admitting a will to probate, whether the will is:

- (1) written or unwritten;
- (2) in the applicant's possession or not;
- (3) lost;
- (4) destroyed; or
- (5) outside of this state.

SECTION 22. Section 256.052(a), Estates Code, is amended to read as follows:

(a) An application for the probate of a will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

- (1) each applicant's name and domicile;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, *date* ~~[time]~~, and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name, state of residence, and physical address where service can be had of the executor named in the will or other person to whom the applicant desires that letters be issued;
- (8) the name of each subscribing witness to the will, if any;
- (9) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
- (10) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom;
- (11) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and
- (12) that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

SECTION 23. Section 256.054, Estates Code, is amended to read as follows:

Sec. 256.054. **ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED.** In addition to the requirements for an application under Section 256.052, if an applicant for the probate of a will cannot produce the will in court, the application must state:

- (1) the reason the will cannot be produced;
- (2) the contents of the will, as far as known; and
- (3) the name~~[, age, marital status,]~~ and address, if known, *whether the person is an adult or minor*, and the relationship to the testator, if any, of:
 - (A) each devisee;
 - (B) each person who would inherit as an heir of the testator in the absence of a valid will; and

(C) in the case of partial intestacy, each heir of the testator.

SECTION 24. Sections 256.152(b) and (c), Estates Code, are amended to read as follows:

(b) A will that is self-proved as provided by Subchapter C, Chapter 251, ~~that [or, if executed in another state or a foreign country,]~~ is self-proved in accordance with the law ~~[laws]~~ of ~~another [the]~~ state or foreign country ~~where the will was executed, as that law existed at the time of the will's execution, or that is self-proved in accordance with the law of another state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or the time of the testator's death, [of the testator's domicile at the time of the execution]~~ is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

(c) As an alternative to Subsection (b), a will ~~[executed in another state or a foreign country]~~ is considered self-proved without further evidence of the law of ~~any [the other]~~ state or foreign country if:

(1) *the will was executed in another state or a foreign country or the testator was domiciled or had a place of residence in another state or a foreign country at the time of the will's execution or the time of the testator's death; and*

(2) the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(A) ~~[(1)]~~ the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(B) ~~[(2)]~~ the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

SECTION 25. Section 257.051(a), Estates Code, is amended to read as follows:

(a) An application for the probate of a will as a muniment of title must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

- (1) each applicant's name and domicile;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, *date* ~~[time]~~, and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name, *state of* ~~[and]~~ residence, *and physical address where service can be had of the* ~~[of]~~:

~~[(A) any]~~ executor named in the will;

(8) *the name of* ~~and~~

~~[(B)]~~ each subscribing witness to the will, if any;

(9) ~~[(8)]~~ whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;

(10) ~~[(9)]~~ that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate;

(11) ~~[(10)]~~ whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom; and

(12) ~~[(11)]~~ whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee.

SECTION 26. Section 257.053, Estates Code, is amended to read as follows:

Sec. 257.053. **ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED.** In addition to the requirements for an application under Section 257.051, if an applicant for the probate of a will as a muniment of title cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;

(2) the contents of the will, to the extent known; and

(3) the name~~[-age, marital status,]~~ and address, if known, *whether the person is an adult or minor*, and the relationship to the testator, if any, of:

(A) each devisee;

(B) each person who would inherit as an heir of the testator in the absence of a valid will; and

(C) in the case of partial intestacy, each heir of the testator.

SECTION 27. Section 301.002(a), Estates Code, is amended to read as follows:

(a) Except as provided by Subsection (b) *and Section 501.006 with respect to a foreign will*, an application for the grant of letters testamentary or of administration of an estate must be filed not later than the fourth anniversary of the decedent's death.

SECTION 28. Section 301.051, Estates Code, is amended to read as follows:

Sec. 301.051. **ELIGIBLE APPLICANTS FOR LETTERS.** An executor named in a will, *an independent administrator designated by all of the distributees of the decedent under Section 401.002(b) or 401.003*, or an interested person may file an application with the court for:

(1) the appointment of the executor named in the will; or

(2) the appointment of an administrator, if:

(A) there is a will, but:

(i) no executor is named in the will; or

(ii) the executor named in the will is disqualified, refuses to serve, is dead, or resigns; or

(B) there is no will.

SECTION 29. Section 301.052, Estates Code, is amended to read as follows:

Sec. 301.052. **CONTENTS OF APPLICATION FOR LETTERS OF ADMINISTRATION.** An application for letters of administration when no will is alleged to exist must state:

(1) the applicant's name, domicile, and, if any, relationship to the decedent;

(2) the decedent's name and that the decedent died intestate;

(3) the fact, *date* ~~[time]~~, and place of the decedent's death;

(4) facts necessary to show that the court with which the application is filed has venue;

(5) whether the decedent owned property and, if so, include a statement of the property's probable value;

(6) the name~~[, age, marital status,]~~ and address, if known, *whether the heir is an adult or minor*, and the relationship to the decedent of each of the decedent's heirs;

(7) if known by the applicant at the time the applicant files the application, whether one or more children were born to or adopted by the decedent and, if so, the name, birth date, and place of birth of each child;

(8) if known by the applicant at the time the applicant files the application, whether the decedent was ever divorced and, if so, when and from whom;

(9) that a necessity exists for administration of the decedent's estate and an allegation of the facts that show that necessity; and

(10) that the applicant is not disqualified by law from acting as administrator.

SECTION 30. Section 301.151, Estates Code, is amended to read as follows:

Sec. 301.151. GENERAL PROOF REQUIREMENTS. An applicant for the issuance of letters testamentary or of administration of an estate must prove to the court's satisfaction that:

(1) the person whose estate is the subject of the application is dead;

(2) *except as provided by Section 301.002(b) with respect to administration necessary to receive or recover property due a decedent's estate, and Section 501.006 with respect to a foreign will*, four years have not elapsed since the date of the decedent's death and before the application;

(3) the court has jurisdiction and venue over the estate;

(4) citation has been served and returned in the manner and for the period required by this title; and

(5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified.

SECTION 31. Section 308.004(a), Estates Code, is amended to read as follows:

(a) Not later than the 90th day after the date of an order admitting a will to probate, the personal representative shall file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the representative or a certificate signed by the representative's attorney stating:

(1) for each beneficiary to whom notice was required to be given under this subchapter, the name ~~[and address]~~ of the beneficiary to whom the representative gave the notice or, for a beneficiary described by Section 308.002(b), the name ~~[and address]~~ of the beneficiary and of the person to whom the notice was given;

(2) the name ~~[and address]~~ of each beneficiary to whom notice was not required to be given under Section 308.002(c)(2), (3), or (4);

(3) the name of each beneficiary whose identity or address could not be ascertained despite the representative's exercise of reasonable diligence; and

(4) any other information necessary to explain the representative's inability to give the notice to or for any beneficiary as required by this subchapter.

SECTION 32. Section 309.001, Estates Code, is amended to read as follows:

Sec. 309.001. APPOINTMENT OF APPRAISERS. (a) At any time after letters testamentary or of administration are granted, the court, for good cause, on the court's own motion or on the motion of an interested *person* ~~[party]~~ shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property.

(b) ~~[At any time after letters testamentary or of administration are granted, the court, for good cause shown, on the court's own motion or on the motion of an interested person shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property.]~~

[~~(e)~~] If the court makes an appointment under Subsection (a) [~~or (b)~~] and part of the estate is located in a county other than the county in which the letters were granted, the court, if the court considers necessary, may appoint at least one but not more than three disinterested persons who are residents of the county in which the relevant part of the estate is located to appraise the estate property located in that county.

SECTION 33. Section 309.056, Estates Code, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b) Notwithstanding Sections 309.051 and 309.052, or any contrary provision in a decedent's will that does not specifically prohibit the filing of an affidavit described by this subsection, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisement, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries *other than those described by Subsection (b-1)* have received a verified, full, and detailed inventory and appraisement. The affidavit in lieu of the inventory, appraisement, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

(b-1) Absent a written request by a beneficiary, an independent executor is not required to provide a verified, full, and detailed inventory and appraisement to a beneficiary who:

(1) is entitled to receive aggregate devises under the will with an estimated value of \$2,000 or less;

(2) has received all devises to which the beneficiary is entitled under the will on or before the date an affidavit under this section is filed; or

(3) has waived in writing the beneficiary's right to receive a verified, full, and detailed inventory and appraisement.

(c) If the independent executor files an affidavit in lieu of the inventory, appraisement, and list of claims as authorized under Subsection (b):

(1) any person interested in the estate, including a possible heir of the decedent, [~~or~~] a beneficiary under a prior will of the decedent, *or a beneficiary described by Subsection (b-1)*, is entitled to receive a copy of the inventory, appraisement, and list of claims from the independent executor on written request;

(2) the independent executor may provide a copy of the inventory, appraisement, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; and

(3) a person interested in the estate may apply to the court for an order compelling compliance with Subdivision (1), and the court, in its discretion, may compel the independent executor to provide a copy of the inventory, appraisement, and list of claims to the interested person or may deny the application.

SECTION 34. Section 352.052(b), Estates Code, is amended to read as follows:

(b) A person designated as a devisee in or beneficiary of a will or an alleged will [~~or as administrator with the will or alleged will annexed,~~] who, for the purpose of having the will or alleged will admitted to probate, defends the will or alleged will or prosecutes any proceeding in good faith and with just cause, whether or not successful, may be allowed out of the estate the person's necessary expenses and disbursements in those proceedings, including reasonable attorney's fees.

SECTION 35. Sections 353.051(a) and (b), Estates Code, are amended to read as follows:

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisement, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisement, and list of claims is filed, the court by order shall set aside:

(1) the homestead for the use and benefit of the decedent's surviving spouse and minor children; and

(2) all other *exempt* ~~[estate]~~ property described by Section 42.002(a), Property Code, ~~[that is exempt from execution or forced sale by the constitution and laws of this state]~~ for the use and benefit of the decedent's:

(A) surviving spouse and minor children;

(B) unmarried adult children remaining with the decedent's family; and

(C) each other adult child who is incapacitated.

(b) Before the inventory, appraisal, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisal, and list of claims is filed:

(1) the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to have exempt property described by Subsection (a), including the homestead, set aside by filing an application and a verified affidavit listing all *exempt* property that the applicant claims is exempt property described by Subsection (a); and

(2) any of the decedent's unmarried adult children remaining with the decedent's family, any other adult child of the decedent who is incapacitated, or a person who is authorized to act on behalf of the adult incapacitated child may apply to the court to have all exempt property described by Subsection (a), other than the homestead, set aside by filing an application and a verified affidavit listing all *the exempt* property, other than the homestead, that the applicant claims is exempt property described by Subsection (a).

SECTION 36. Section 353.052, Estates Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) *This section only applies to exempt property described by Section 353.051(a).*

(a-1) The executor or administrator of an estate shall deliver, without delay, exempt property that has been set aside for the decedent's surviving spouse and children in accordance with this section.

SECTION 37. Section 353.053(a), Estates Code, is amended to read as follows:

(a) If all or any of the specific articles of exempt property described by Section 353.051(a) ~~[from execution or forced sale by the constitution and laws of this state]~~ are not among the decedent's effects, the court shall make, in lieu of the articles not among the effects, a reasonable allowance to be paid to the decedent's surviving spouse and children as provided by Section 353.054.

SECTION 38. Sections 353.153 and 353.154, Estates Code, are amended to read as follows:

Sec. 353.153. TITLE TO PROPERTY OF INSOLVENT ESTATE. If on final settlement an estate proves to be insolvent, the decedent's surviving spouse and children have absolute title to all property and allowances set aside or paid to them under this title. *The distributees are entitled to distribution of any remaining exempt property held by the executor or administrator in the same manner as other estate property.* The property and allowances set aside or paid to the decedent's surviving spouse or children, and any remaining exempt property held by the executor or administrator, may not be taken for any of the estate debts except as provided by Section 353.155.

Sec. 353.154. CERTAIN PROPERTY NOT CONSIDERED IN DETERMINING SOLVENCY. In determining whether an estate is solvent or insolvent, the exempt property set aside for the decedent's surviving spouse or children, any allowance made in lieu of that exempt property, ~~[and]~~ the family allowance under Subchapter C, and any remaining exempt property held by the executor or administrator may not be estimated or considered as estate assets.

SECTION 39. Subchapter D, Chapter 355, Estates Code, is amended by adding Section 355.1551 to read as follows:

Sec. 355.1551. CLAIM HOLDER DUTY TO POSSESS OR SELL WITHIN REASONABLE TIME. (a) A claim holder of a claim allowed and approved under Section 355.151(a)(2) who elects to take possession or sell the property securing the debt before final maturity in satisfaction of the claim holder's claim must do so within a reasonable time, as determined by the court.

(b) If the claim holder fails to take possession or sell secured property within a reasonable time under Subsection (a), on application by the personal representative, the court may require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt.

(c) This section does not apply to an estate administered as an independent administration under Subtitle I.

SECTION 40. Section 401.002, Estates Code, is amended to read as follows:

Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT. (a) Except as provided in Section 401.001(b), if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will, or in one or more separate documents consenting to the application for probate of the decedent's will, the executor named in the will to serve as independent executor and request ~~[in the application]~~ that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees ~~[in the application]~~ as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Except as provided in Section 401.001(b), in situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate the executor's inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will, or in one or more separate documents consenting to the application for probate of the decedent's will, a qualified person, firm, or corporation to serve as independent administrator and request ~~[in the application]~~ that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees ~~[in the application]~~ as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

SECTION 41. Section 401.003(a), Estates Code, is amended to read as follows:

(a) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate, or in one or more documents consenting to the application for administration of the decedent's estate, a qualified person, firm, or corporation to serve as independent administrator and request ~~[in the application]~~ that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees ~~[in the application]~~ as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

SECTION 42. Sections 401.004(c) and (h), Estates Code, are amended to read as follows:

(c) If a distributee is an incapacitated person, the guardian of the person of the distributee may *consent to the creation of an independent administration* ~~sign the application~~ on behalf of the distributee. If the probate court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated by the distributees ~~in the application~~ as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 401.002 or 401.003, the court may not enter an order granting independent administration of the estate. If a distributee who is an incapacitated person has no guardian of the person, the probate court may appoint a guardian ad litem to *act* ~~make application~~ on behalf of the incapacitated person if the court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(h) If a distributee of a decedent's estate dies and if by virtue of the distributee's death the distributee's share of the decedent's estate becomes payable to the distributee's estate, the deceased distributee's personal representative may *consent to the* ~~sign the application for~~ independent administration of the decedent's estate under Section 401.002 or 401.003 and under Subsection (c).

SECTION 43. Section 401.006, Estates Code, is amended to read as follows:

Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a situation in which a decedent does not have a will, or a decedent's will does not contain language authorizing the personal representative to sell property or contains language that is not sufficient to grant the representative that authority, the court may include in an order appointing an independent executor ~~under Section 401.002 or 401.003~~ any general or specific authority regarding the power of the independent executor to sell property that may be consented to by the beneficiaries who are to receive any interest in the property in the application for independent administration *or for the appointment of an independent executor* or in their consents to the independent administration *or to the appointment of an independent executor*. The independent executor, in such event, may sell the property under the authority granted in the court order without the further consent of those beneficiaries.

SECTION 44. Section 452.051(a), Estates Code, is amended to read as follows:

(a) If a contest related to probating a will or granting letters *testamentary* or of administration is pending, the court may appoint a temporary administrator, with powers limited as the circumstances of the case require.

SECTION 45. Subtitle J, Title 2, Estates Code, is amended by adding Chapter 456 to read as follows:

CHAPTER 456. DISBURSEMENT AND CLOSING OF LAWYER TRUST OR ESCROW ACCOUNTS

Sec. 456.001. DEFINITION. *In this chapter, "eligible institution" means a financial institution or investment company in which a lawyer has established an escrow or trust account for purposes of holding client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct.*

Sec. 456.002. AUTHORITY TO DESIGNATE LAWYER ON CERTAIN TRUST OR ESCROW ACCOUNTS. (a) *When administering the estate of a deceased lawyer who established one or more trust or escrow accounts for client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct, the personal representative may hire through written agreement a lawyer authorized to practice in this state to:*

- (1) *be the authorized signer on the trust or escrow account;*
- (2) *determine who is entitled to receive the funds in the account;*

- (3) *disburse the funds to the appropriate persons or to the decedent's estate; and*
- (4) *close the account.*

(b) *If the personal representative is a lawyer authorized to practice in this state, the personal representative may state that fact and disburse the trust or escrow account funds of a deceased lawyer in accordance with Subsection (a).*

(c) *An agreement under Subsection (a) or a statement under Subsection (b) must be made in writing, and a copy of the agreement or statement must be delivered to each eligible institution in which the trust or escrow accounts were established.*

Sec. 456.003. **DUTY OF ELIGIBLE INSTITUTIONS.** *Within a reasonable time after receiving a copy of a written agreement under Section 456.002(a) or a statement from a personal representative under Section 456.002(b) and instructions from the lawyer identified in the agreement or statement, as applicable, regarding how to disburse the funds or close a trust or escrow account, an eligible institution shall disburse the funds and close the account in compliance with the instructions.*

Sec. 456.004. **LIABILITY OF ELIGIBLE INSTITUTIONS.** *An eligible institution is not liable for any act respecting an account taken in compliance with this chapter.*

Sec. 456.005. **RULES.** *The supreme court may adopt rules regarding the administration of funds in a trust or escrow account subject to this chapter.*

SECTION 46. Section 501.001, Estates Code, is amended to read as follows:

Sec. 501.001. **AUTHORITY FOR ANCILLARY PROBATE OF FOREIGN WILL.** *The written will of a testator who was not domiciled in this state at the time of the testator's death may be admitted to probate at any time in this state if:*

- (1) *the will would affect any property in this state; and*
- (2) *proof is presented that the will stands probated or otherwise established in any state of the United States or a foreign nation.*

SECTION 47. Section 501.006(a), Estates Code, is amended to read as follows:

(a) *On application, an executor named in a foreign will admitted to ancillary probate in this state in accordance with this chapter is entitled to receive ancillary letters testamentary on proof made to the court that:*

- (1) *the executor has qualified to serve as executor in the jurisdiction in which the will was previously admitted to probate or otherwise established; ~~and~~*
- (2) *the executor is not disqualified from serving in that capacity in this state; and*
- (3) *if the will is admitted to ancillary probate in this state after the fourth anniversary of the testator's death, the executor continues to serve in that capacity in the jurisdiction in which the will was previously admitted to probate or otherwise established.*

SECTION 48. The addition by this Act of Section 255.304, Estates Code, and the amendment by this Act of Sections 113.004(4), 251.1045(a), 253.001(b) and (c), 254.005, 256.003(a), 353.051(a) and (b), 353.052, 353.053(a), 353.153, 353.154, 452.051(a), and 501.001, Estates Code, is intended to clarify rather than change existing law.

SECTION 49. Section 113.152(c), Estates Code, as added by this Act, applies to a P.O.D. account held by a financial institution on or after the effective date of this Act, regardless of the date on which the account was opened.

SECTION 50. Sections 201.051, 201.052, 201.056, 308.004(a), 309.056, and 352.052(b), Estates Code, as amended by this Act, and Section 251.053 and Subchapter I, Chapter 255, Estates Code, as added by this Act, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

SECTION 51. Sections 123.001 and 123.052(a), Estates Code, as amended by this Act, and Subchapter D, Chapter 123, Estates Code, as added by this Act, apply only to an individual whose marriage is dissolved on or after the effective date of this Act.

SECTION 52. Sections 202.005, 202.055, 202.056, 202.201(a), and 257.053, Estates Code, as amended by this Act, apply to an action filed or other proceeding commenced on or after the effective date of this Act. An action filed or other proceeding commenced before that date is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 53. Subchapter J, Chapter 255, Section 355.1551, and Chapter 456, Estates Code, as added by this Act, and Sections 309.001, 401.002, 401.003(a), 401.004(c) and (h), and 401.006, Estates Code, as amended by this Act, apply to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act.

SECTION 54. Sections 256.003(b), 256.051(a), 256.052(a), 256.054, 256.152(b) and (c), 257.051(a), 301.002(a), 301.051, 301.052, 301.151, and 501.006(a), Estates Code, as amended by this Act, apply only to an application for the probate of a will or administration of a decedent's estate that is filed on or after the effective date of this Act. An application for the probate of a will or administration of a decedent's estate filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 55. This Act takes effect September 1, 2015.

Passed the Senate on April 30, 2015: Yeas 31, Nays 0; the Senate concurred in House amendment on May 30, 2015: Yeas 31, Nays 0; passed the House, with amendment, on May 27, 2015: Yeas 142, Nays 2, two present not voting.

Approved June 18, 2015.

Effective September 1, 2015.

PRACTICES AND PROFESSIONS REGULATED BY THE TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 950

S.B. No. 1007

AN ACT

relating to the practices and professions regulated by the Texas Appraiser Licensing and Certification Board.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1103.003, Occupations Code, is amended by amending Subdivisions (2-a), (6-b), (7), and (8) and adding Subdivisions (2-b), (4-a), and (5-a) to read as follows:

(2-a) *"Appraisal review" has the meaning assigned by Section 1104.003.*

(2-b) *"Appraisal Standards Board" means the Appraisal Standards Board of the Appraisal Foundation, or its successor.*

(4-a) *"Appraiser trainee" means an appraiser trainee licensed under this chapter.*

(5-a) *"Certified appraiser" means a person who is certified under this chapter to practice as a certified general or certified residential appraiser.*

(6-b) *"Federal financial institution regulatory agency" means:*

- (A) the Board of Governors of the Federal Reserve System;
- (B) the Federal Deposit Insurance Corporation;
- (C) the Office of the Comptroller of the Currency;
- (D) the Consumer Financial Protection Bureau [~~Office of Thrift Supervision~~];